BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY OF
THE COMMONWEALTH OF MASSACHUSETTS

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	Docket No. 04-33

SPRINT'S RESPONSE AND MOTION TO DISMISS
VERIZON'S ARBITRATION PETITION

Pursuant to 220 CMR § 1.04 and 47 U.S.C. § 252(b)(3) of the Telecommunications Act of 1996 ("Act"), Sprint Communications Company L.P. ("Sprint") respectfully responds to and moves to dismiss the Petition for Arbitration of Verizon New England Inc. ("Petition"). Verizon New England Inc. ("Verizon") has requested the Department of Telecommunications and Energy ("Department") to initiate a consolidated arbitration proceeding to amend the interconnection agreements between Verizon and each of the competitive local exchange carriers ("CLECs") and, to the extent that their current interconnection agreements provide for access to unbundled network elements ("UNEs"), each of the Commercial Mobile Radio Service ("CMRS") providers in Massachusetts. Verizon purports to file its unprecedented Petition under the authority of the *Triennial Review Order*.[1]

[1] Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of Section, 751 Unbundling Obligations of Incumbent Local Exchange Carriers,* 18 FCC Rcd 16978 (2003) *("Triennial Review Order"* or "TRO"), *reversed in part and remanded, United States Telecom Ass'n v. FCC,* Nos. 00-1012, 00-1015, 03-1310 *et al.* (D.C. Cir).

Verizon has failed in every respect to comport to the principles established in the *Triennial Review Order* and under the Telecommunications Act of 1934, as amended ("Act"). In addressing a similar petition filed by Verizon in North Carolina, the North Carolina Utilities Commission recently held the that the proceeding should be continued indefinitely.[2] The North Carolina Commission specifically found that Verizon's request was of a similar subject matter as the North Carolina Commission-initiated TRO proceeding. The North Carolina Commission found it strange that Verizon was filing the consolidated arbitration request while declining to participate in the TRO proceeding. The North Carolina Commission also found that Verizon had failed to comply with its procedural rules for filing an arbitration.[3]

This Petition is a facade by Verizon to deprive other carriers of the opportunity to negotiate in good faith under the provisions of the Act for an appropriate amendment pursuant to the provisions of the *Triennial Review Order*. As discussed in more detail below, Sprint requests that the Department dismiss this Petition as to Sprint and instruct Verizon to negotiate with Sprint in good faith toward a mutually acceptable amendment to the existing interconnection agreement.

I. Introduction

Sprint did not receive prior notice of Verizon's intent to file this Petition.[4] This is not the practice Sprint has experienced with other incumbent local exchange companies ("ILECs") in the negotiation of interconnection agreements. In fact, Verizon only notified Sprint of its intent to

[2] *In the Matter of the Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Docket No. P-19, SUB 477, Order *Continuing Proceedings Indefinitely*, March 3, 2004. ("North Carolina Order", copy attached as Attachment 2)

[3] *Id*. at 2.

[4] *See* Affidavit of John S. Weyforth attached hereto as Attachment 1.

file this Petition after this Petition and some fourteen (14) other such petitions were filed in various states.[5] This is an obvious heavy-handed attempt by Verizon to impose its views on other carriers. Verizon's Petition admits as much on its face. Verizon notes that "some CLECs have signed Verizon's draft amendment, without substantive changes."[6] Verizon goes on to state that "virtually none provided a timely response" to Verizon's notice and draft amendment. This statement is not accurate. As discussed more fully below, Sprint did provide a timely response to Verizon, which Verizon chose to ignore. The obvious conclusion is that the only amendments Verizon would consider are those amendments "without substantive changes" and no others.

Verizon has notified Sprint that it will be filing similar petitions in all of jurisdictions in which it serves, that will potentially result in thirty-two (32) total simultaneous arbitrations in thirty (30) states.[7] Apparently Verizon has the wherewithal to undertake simultaneous arbitrations in thirty (30) jurisdictions; however, this will put an enormous strain on the Department's and Sprint's resources.

Since Sprint did not anticipate the filing of this Petition and Verizon's Petition is incomplete, Sprint will need additional time to thoroughly respond to the contract provisions and terms as set forth in the Verizon's proposed TRO amendment.[8] Sprint will also need additional time to respond to the substance of the justification set forth by Verizon in the body of the Petition in support of its proposed amendment. Depending on the progress of this proceeding, Sprint reserves the right to file such additional comments.

---

[5] *Id*. at 4 and 5.

[6] Petition at 3-4.

[7] *Id*. Verizon provides service in thirty (30) states but the former GTE properties overlap the former Bell Atlantic properties in two states.

[8] Exhibit 2 to the Petition.

II. D. C. Circuit Court of Appeals Decision

Verizon's Petition should also be dismissed because of the decision by the United States Court of Appeals for the District of Columbia in *United States Telecom Ass'n v. FCC,* Nos. 00-1012, 00-1015, 03-1310 *et al., (hereinafter USTA II v. FCC)* issued on March 2, 2004. Verizon noted in its Expedited Motion to Stay Track A of D.T.E. 03-60 that "[b]ecause the Opinion invalidates both the FCC's delegation of authority to determine whether CLECs are impaired without access to unbundled elements and the substantive tests that the FCC promulgated for making such determinations, continuing these proceedings is inefficient for both the parties and the Department."[9] In response to Verizon's Motion, the Department requested comments, by March 12, 2004, on Verizon's Motion and the procedural approach going forward.[10]

While Sprint does not necessarily concur with Verizon's characterization of *USTA II v. FCC*, Verizon's Motion nevertheless underscores Verizon's inconsistency in moving this Department to stay Track A of D.T.E. 03-60 while at the same time asking the Department and the parties to spend considerable time and resources to arbitrate an interconnection dispute that is based upon the same rules that are at issue in the TRO and *USTA II v. FCC.*

This Response does not take into consideration all of the effects of *USTA II v. FCC*. Due to time constraints and the complexity of the issues involved it was not possible to thoroughly review the Court's Decision in order to prepare this Response. Sprint reserves the right to file additional comments in order to address the issues raised by the Court's Decision at a later date.

---

[9] D.T.E. 03-60, Expedited Motion of Verizon Massachusetts to Stay Track A Of This Proceeding, dated March 3, 2004 at 1.

[10] Memorandum dated March 4, 2004 from Paula Foley to D.T.E. 03-60 Service List.

III. Verizon Has Failed to Negotiate in Good Faith and Its Petition Should be Dismissed with Respect to Sprint

In its Petition,[11] Verizon states that:

> Since Verizon sent its October 2, 2003 notice, some CLECS have signed Verizon's draft amendment without substantive changes. Of the remaining CLECs in Washington DC, virtually none provided a timely response to Verizon's October 2, 2003 notice and draft amendment. In fact, Verizon (and its affiliates that provide local exchange service in other jurisdictions) received the majority of the substantive responses to the draft amendment within the past two to four weeks - that is, more than three, and in some cases four, months after Verizon made the draft amendment available to CLECs.

This is a patently false Verizon assertion. Upon receipt of the notice and draft amendment Sprint promptly contacted Verizon to discuss changes to the draft amendment.[12] Attached as Attachment 1 to this Response is an affidavit of Mr. John S. Weyforth, a Sprint employee, which sets forth in detail the efforts Sprint undertook to attempt to negotiate a satisfactory TRO amendment based on the Verizon proposal it received. Attached as Exhibit 1 to Mr. Weyforth's affidavit is a copy of an email and a redlined version of the draft amendment that Ms. Shelley Jones, a Sprint employee, sent to Mr. Stephen Hughes at Verizon. Mr. Hughes was one of the Verizon-designated negotiators. This email, with the redlined draft, sets forth Sprint's proposed changes to the draft agreement. It also sets forth Sprint's desire to resolve in an expeditious fashion the outstanding issues that Sprint sought to address with Verizon. This email was sent to Verizon on October 29, 2003, yet Verizon has not accepted or rejected any of the proposed changes Sprint raised in this email.[13] Mr. Weyforth's affidavit also sets forth the chronology of the responses from Verizon in attempting to negotiate issues up to the point of Verizon filing the

[11] Petition at 3-4.

[12] *See* Affidavit of John S. Weyforth attached hereto as Attachment 1.

[13] Affidavit of John S. Weyforth at 5.

Petition. Apparently Verizon purposefully avoided any meaningful discussion with Sprint to resolve outstanding issues.

Verizon has yet to specifically accept or reject any proposed change Sprint has offered during the discussions that have taken place between the parties. Section 51.301(c) (7) of the FCC's rules provides that it is a breach of the good faith requirement to refuse "throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues". Verizon's refusal to accept or reject Sprint proposals in the negotiation process caused significant delays that resulted in Verizon filing the instant petition. Simply stated, Verizon acted in bad faith in failing to take definitive positions to resolve issues.

IV. Verizon's Petition is Procedurally Defective

Aside from Verizon's refusal to negotiate the amendment in good faith, the form of the Petition fails to comply with the Act and the Department's rules. Section 252 (b) 2 of the Act provides in pertinent part:

> (2) DUTY OF PETITIONER.--
>
> (A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—
>
> (i) the unresolved issues;
> (ii) the position of each of the parties with respect to those issues; and
> (iii) any other issue discussed and resolved by the parties.
>
> (B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

Verizon has failed to comply with each of these provisions of the Act and therefore its Petition must be dismissed.

Similarly, the Department's Arbitration Ground Rules require the parties to file jointly the stipulation of issues resolved, and a summary of issues to be resolved that identifies the factual and legal issues that to be addressed.[14] Given Verizon's incomplete Petition, it will be extremely difficult for the parties to comply with these requirements.

Unfortunately, Verizon's Petition does not contain a discussion of the positions of the parties as required by Section 252(b)(2) of the Act . Nor does it reflect any identification of issues that have been discussed between the parties, Sprint's position, or which issues remain unresolved. The form of the Petition does not meet the requirements under the Act.[15]

Sprint expressed agreement with Verizon over various provisions in the proposed draft. Sprint took a great deal of time to try to focus the discussion to a narrow list of issues, which Verizon completely ignored.[16] Exhibit 1 contains Sprint's red-line version of Verizon's draft TRO amendment. This document provides Sprint's suggested edits to Verizon's proposed Local Switching, Service Management Systems, Sub-Loop, Unbundled Local Circuit Switching, Commingling and Combinations, Performance Plans, and other items.

---

[14] Department of Telecommunications and Energy Arbitration Ground Rules, Section II, available at http://www.state.ma.us/dpu/telecom/arbpack.pdf.

[15] Because Verizon has not properly presented the issues to be arbitrated or the parties' positions, Sprint is unable to respond with a detailed statement of the resolved and unresolved issues or the parties' positions. Sprint's red-line version (attached to Exhibit 1) of Verizon's draft TRO amendment does, however, identify the disputed interconnection contract amendment language from Sprint's perspective. Sprint reserves the right to file a more detailed statement of the resolved and unresolved issues and the parties' positions when they become known. Unfortunately, Sprint has not received Verizon's response to Sprint's red-line edits to Verizon's draft TRO amendment.

[16] *See* Exhibit 1 to Attachment 1, Affidavit of John S. Weyforth, Sprint's redlined comments to the initial draft amendment.

It should also be noted that Sprint has not received a copy of the Petition from Verizon as required by Section 252(b)(2)(B) of the Act. The service list does not contain a correct address for Sprint's negotiating team responsible for negotiating interconnection contracts with Verizon. Notwithstanding weekly contact between Verizon and Sprint, Verizon failed, despite repeated attempts, to have the professional courtesy to send a list of where the filings have occurred and a copy of the petitions filed in multiple jurisdictions to those Sprint employees currently engaged in discussions with Verizon.[17]

As noted previously, the North Carolina Utilities Commission has already issued an order continuing the petition Verizon filed in North Carolina indefinitely. The North Carolina Commission ruled in part based on the fact that the Verizon's North Carolina petition was procedurally defective. The petition filed in North Carolina is substantively identical to the petition filed by Verizon in this proceeding and should be dismissed.

V. Verizon Failed to Follow the Change in Law Provisions Set Forth in the Interconnection Agreement

Verizon states that it filed this Petition pursuant to the arbitration window (February 14, 2004 to March 1, 2004) established by 47 U.S.C. § 252 (b) (1) and the FCC's *Triennial Review Order*.[18] Verizon's interpretation of Paragraph 703 of the *Triennial Review Order* is flawed. Paragraph 703 states in part as follows:

> First, we require incumbent and competitive LECs to use section 252(b) as a default timetable for modification of interconnection agreements **that are silent concerning change of law and/or transition timing.** (Emphasis added)

[17] Affidavit of John S. Weyforth at 5.

[18] *Triennial Review Order* at paragraph 703.

Many of the interconnection agreements between Sprint and Verizon have change in law provisions in them and thus Verizon would be required to follow those procedures to implement the provisions of the TRO. The specific provision contained in Sprint's Massachusetts contract states as follows in Section 8:

8.0 Government Compliance

8.1 The provisions of this Agreement are subject in their entirety to the applicable provisions of the Act and any other orders, restrictions and requirements of governmental, regulatory, and judicial authorities with competent jurisdiction over the subject matter thereof. Each Party shall remain in compliance with Applicable Law in the course *of* performing this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

8.2 VERIZON represents and SPRINT acknowledges that VERIZON is entering into this Agreement specifically in order to satisfy the obligations of VERIZON as set forth in the Act and the Order.

8.3 In the event that a change in Applicable Law materially affects any material terms of this Agreement or the rights or obligations of either SPRINT or VERIZON hereunder or the ability of SPRINT or VERIZON to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action.

8.4 Notwithstanding anything herein to the contrary, in the event that as a result of any unstayed decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that a Party ("Providing Party") shall not be required to furnish any service, facility, arrangement or benefit required to be furnished or provided to the other Party ("Recipient Party") hereunder, then the Providing Party may discontinue the provision of any such service, facility, arrangement or benefit ("Discontinued Arrangement") to the extent permitted by any such decision, order or determination by providing sixty (60) days prior written notice to the Recipient Party, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff [including, but not limited to, to the extent applicable, in VERIZON Tariffs DTE MA Nos. 10, 14, 15, 16 or 17, or F.C.C. No. 111 or Applicable Law) for termination of such Discontinued Arrangement, in which event such specific period and/or conditions shall apply. Immediately upon provision of such written notice to the Recipient Party, the Recipient Party shall be prohibited from ordering and the Providing Party shall have no obligation to provide new Discontinued Arrangements.

> 8.5 Nothing contained in this Agreement shall limit either Party's right to appeal, seek reconsideration of, or otherwise seek to have stayed, modified, reversed or invalidated, any order (including, but not limited to, the Arbitration Orders), rule, regulation, decision, ordinance or statute issued by the Department, the FCC, any court or any other governmental authority, related to, concerning or that may affect a Party's obligations under this Agreement or Applicable Law.

Verizon has made no attempt to discuss with Sprint the implications of the change in law provision as it affects the *Triennial Review Order*. Verizon should be required to address the implications of this provision as part of the amendment to the interconnection agreement.

VI. Conclusion

For the foregoing reasons, Sprint respectfully requests the Department to dismiss Verizon's Petition, or in the alternative, dismiss it with respect to Sprint. Verizon has made no effort to negotiate in good faith with Sprint to modify the existing interconnection agreement in order to implement the provisions of the *Triennial Review Order.* This Department should order Verizon to initiate such discussions with Sprint. If Verizon's Petition is not dismissed, Sprint respectfully requests a hearing to address this matter.

In addition, the implications of the D.C. Court of Appeals for the District of Columbia decision that vacated in part and reversed in part the *Triennial Review Order are* unclear at this time. Verizon reserved the right to modify its positions and draft amendment should such a decision be forthcoming.[19] The Department should also require Verizon to file such modifications before any party is required to respond.

[19] Verizon Petition at 4-5.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.

Craig D. Dingwall
Director/General Attorney State Regulatory/NE
401 9th Street, N.W., Suite 400
Washington, DC 20004
202-585-1936
202-585-1894 (FAX)
craig.d.dingwall@mail.sprint.com

Its Attorney

March 15, 2004